

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Energy Competition Standards

Proposed Amendments: N.J.A.C. 14:4-2.3, 3.2, 3.4, 3.5, 6.3, 6.5, 6.6, 6.7, 6.9, and 7.6

Proposed New Rules: N.J.A.C. 14:4-6.11 and 7.12

Authorized By: New Jersey Board of Public Utilities , Robert M. Hanna, President,
Jeanne M. Fox, Joseph L. Fiordaliso, Nicholas Asselta, and Mary-Anna Holden,
Commissioners.

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13, 48:2-16 through 19, 48:2-23,
48:2-29.1 and 21.2, 48:2-37, and 48:2-51.1; 48:3-7 et seq.; and 48:3-51 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

BPU Docket Number: EX12020158.

Proposal Number: PRN 2012-075.

Comments may be submitted through July 20, 2012 by email **in Microsoft Word
format**, or in a format that can be easily converted to Word, to:
rule.comments@bpu.state.nj.us or on paper to:

Kristi Izzo, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: EX12020158

44 S. Clinton Ave., 9th floor

PO Box 350

Trenton, NJ 08625-0350

The agency proposal follows:

Summary

The Board of Public Utilities (“Board” or “BPU”) is proposing new rules and amendments to multiple sections of N.J.A.C. 14:4 addressing energy competition standards. The proposed new rules and amendments apply to energy anti-slamming, affiliate relations, government energy aggregation programs, and retail choice consumer protection.

At N.J.A.C. 14:4-2.3, the Board is proposing to amend paragraph (c)2 and delete paragraph (c)5. The effect of these changes is to state that the change order verification requirements in paragraph (c)2 that describe the specific information that must be recorded in order to verify a change order, apply to all telephonic enrollments, including those initiated by the customer. Additionally, paragraph (c)5 is proposed to be deleted, since the current regulation can be interpreted to allow a third-party supplier (TPS) to record incomplete information in the case of a telephonic enrollment resulting from a customer-initiated call. The proposed amendments will ensure that the proposed new verification requirements apply to all telephonic enrollments. Finally, proposed new N.J.A.C. 14:4-2.3(h) prohibits a TPS from submitting a change order to an LDC to

reinstate a dropped customer unless it has current authorization to do so or it can provide the LDC with proof dated subsequent to the date of the contested drop notice that the customer did not intend to change suppliers.

At N.J.A.C. 14:4-3.2, the Board is proposing to amend the definition of “existing products and/or services” to remove the language “or an electric and or gas public utility is offering on May 19, 2008” from the end of the definition. With this deletion, the definition will now include all products and services that an electric and/or gas public utility was offering prior to January 1, 1993, or that had been approved by the Board prior to February 9, 1999. This amendment makes the definition consistent with the related statutory provisions of the Electric Discount Energy Competition Act, (EDECA) N.J.S.A. 48:3-49 et seq.

N.J.A.C. 14:4-3.4 requires prior affirmative customer written consent for release of individual proprietary information, or as otherwise authorized by the Board. The amendment clarifies that if a customer consents to the release of proprietary information to a public utility’s PUHC or a related competitive business segment of its PUHC, that same proprietary information cannot be provided to an unaffiliated entity without customer consent to the additional release.

N.J.A.C. 14:4-3.5(u)1 is proposed for amendment to require that transfers, leases, rental, licenses, easements, or other encumbrances of utility assets from an electric and/or gas public utility to an unregulated affiliate must be recorded at the greater of fair market value or book value not simply at fair market value or book value as elected by the utility. The amended paragraph is consistent with N.J.A.C. 14:4-3.5(u)2, which originally included, and currently includes, the word “lesser” in the reverse financial transactional

situation where assets from a related competitive business segment of the public utility holding company are transferred to the electric and/or gas public utility. The suggested change will also be consistent with the Board's jurisdictional authority, and represents how the electric and/or gas public utility operates today.

Proposed new N.J.A.C. 14:4-6.3(1) states that a residential customer may not be charged an exit fee for leaving an aggregation program.

Proposed amendments to N.J.A.C. 14:4-6.5(g) and 6.6(s) clarify that the Board will post sample forms, not actual forms for notifying customers of a government energy aggregation program. This will allow the lead agency of a government energy aggregation program to create forms that can be tailored to the specific government aggregation program. In addition, these amendments eliminate the requirement that the notice for notifying customers of a government energy aggregation program that uses special pricing for renewable energy or includes appliance repair service must be submitted to the Board Secretary for approval. N.J.A.C. 14:4-6.9(g) currently refers to the sections of the rules where the opt-out notice letter is required and to sections where the opt-out notice letter is described. The proposed amendments to this subsection will now refer to the section of the rules where the opt-out notice letter is required.

Proposed amendments to N.J.A.C. 14:4-6.5(b), 6.6(c), and 6.7(a) remove the language that indicates that the agreement between the LDC and the municipality participating in a government energy aggregation program can be obtained from Board staff. This will allow the municipality and the LDC to create an agreement that can be tailored to the specific government aggregation program.

The proposed amendment to N.J.A.C. 14:4-6.7(b)3 provides clarification

regarding the costs that the LDC can recover from the government energy aggregator.

Proposed new N.J.A.C. 14:4-6.11 will provide guidance on how notice must be provided, and the content of said notice, if there is a change to the pricing structure or the energy provider of a government energy aggregation program. Pursuant to N.J.S.A. 48:3-94g, customers must be notified of their right to decline continued participation.

N.J.A.C. 14:4-7.6(a) is proposed for amendment to require TPSs to provide customers with a copy of the contract, and sets forth the delivery methods. Additionally, subsection (j) is proposed for amendment to clarify that while TPSs should not be able to increase rates for customers who sign up for a fixed price contract without the customer's authorization, a TPS should be able to renew a contract with a customer or enter into a new contract with the customer using the same methods that are acceptable for switching to a TPS pursuant to N.J.A.C. 14:4-2.3(c).

The Board is proposing new N.J.A.C. 14:4-7.6(l) to prohibit a TPS from changing the material terms of a contract without the customer's affirmative agreement and set forth some examples of material changes, non-material changes, and types of changes that are permitted..

Proposed new N.J.A.C. 14:4-7.12 is intended to provide clarity on "fixed" or "firm" rates.

The Board has provided a 60-day comment period on the notice of proposal. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is excepted from the provisions at N.J.A.C. 1:30-3.2 governing rulemaking calendars.

Social Impact

The proposed amendments and new rules will have a beneficial social impact by improving standards that protect consumers from having their energy supplier switched without their authorization; protecting customers' privacy by ensuring that customer proprietary information is not released without customer authorization; providing better information to customers regarding government energy aggregation programs by allowing the form that is used to notify customers of a government energy aggregation program to be tailored to the specific program; allowing flexibility regarding the contract between a utility and the lead agency of a government energy aggregation program so that the contract can be tailored to the specific program and better meet the needs of the parties to the contract; ensuring that customers participating in a government energy aggregation program are properly notified of any changes to the program and are aware of their right to opt-out; making it easier for customers to authorize the renewal of a contract with their energy supplier; and protecting customers from unauthorized changes to their contract with their energy supplier.

Economic Impact

The proposed amendments and new rules will have a positive economic impact by ensuring that transfers of assets from a utility to an affiliate are properly accounted for and that residential customers will have the option to leave a government aggregation program without being charged an exit fee. At N.J.A.C. 14:4-7.6(a), to the extent that any TPS is not already complying with this practice, there may be minimal cost to comply. At N.J.A.C. 14:4-7.6(l) there may be an economic benefit to consumers by protecting them from increases in material terms that have not been previously agreed to.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt, or amend State regulations exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. There are no Federal standards applicable to the proposed amendments and new rules. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. does not require a Federal standards analysis for the proposed amendments and new rules.

Jobs Impact

The Board does not expect the proposed amendments and new rules to have any effect on job creation or loss in New Jersey.

Agriculture Industry Impact

The Board does not expect the proposed amendments or new rules to have any effect on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments and new rules do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

The proposed amendments and new rules will have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the scope of the rules is limited to addressing the regulation of the competitive energy market.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will have no impact on smart growth development in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plans in New Jersey because the scope of the rules is limited to addressing the regulation of the competitive energy market.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. ENERGY ANTI-SLAMMING

14:4-2.3 Change order required for switch

(a) - (b) (No change.)

(c) The change order shall be verified through one of the following:

1. (No change.)
2. An audio recording **made by an independent third party or by a TPS** of a

customer agreeing to the switch verbally on a telephone call [made by an independent third party or by a TPS]. The questions and statements of the independent third party or the TPS may be recorded or electronic. However, all customer responses shall be made verbally in real time. The verification shall:

i. – ix. (No change.)

3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:

i. – vii. (No change.)

vii. Include a statement that the customer acknowledges receipt of a copy of the terms and conditions of service; **or**

4. An electronic record of an internet transaction that meets the requirements at N.J.A.C. 14:4-2.5[; or].

[5. An audio recording of a telephone call initiated by the customer.]

(c)- (g) (No change.)

(h) If a TPS receives a customer drop notice from an LDC, the TPS may not submit a change order to the LDC to reinstate that customer unless it receives authorization from the customer after the date of the drop notice in one of the methods set forth in N.J.A.C. 14:4-2.3(c) or it can demonstrate that the switch was done without the customer's authorization.

SUBCHAPTER 3. AFFILIATE RELATIONS

14:4-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following

meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and [in N.J.A.C.] 14:4-1.2.

...

“Existing products and/or services” means those products and/or services, which an electric and/or gas public utility was offering prior to January 1, 1993, or that have been approved by the Board prior to February 9, 1999[, or an electric and or gas public utility is offering on May 19, 2008].

...

14:4-3.4 Information disclosure

(a) An electric and/or gas public utility may provide individual proprietary information to its PUHC or a related competitive business segment of its [public utility holding company] **PUHC**, [and] only with prior affirmative customer written consent, or as otherwise authorized by the Board, and only if [it] **that same proprietary information** is provided to unaffiliated entities on a non-discriminatory basis **with prior affirmative customer written consent, or as otherwise authorized by the Board.**

(b) – (k) (No change.)

14:4-3.5 Separation

(a) - (t) (No change.)

(u) All transfers, leases, rentals, licenses, easements, or other encumbrances of utility assets to a PUHC or related competitive business segment of a PUHC not prohibited by this subchapter shall be subject to the following pricing provisions, consistent with all

other applicable Board rules:

1. Transfers, leases, rental, licenses, easements, or other encumbrances of utility assets from the electric and/or gas public utility to a related competitive business segment of its [public utility holding company] **PUHC** shall be recorded at **the higher of** fair market value or book value; and
2. (No change.)

SUBCHAPTER 6. GOVERNMENT ENERGY AGGREGATION PROGRAMS

14:4-6.3 General provisions

(a) - (k) (No change.)

(l) A residential customer may not be charged an exit fee for leaving an aggregation program at any time.

14:4-6.5 Establishing an Option 1 government-private energy aggregation program

(a) (No change.)

(b) Each participating municipality in an Option 1 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality[, using the applicable form agreement, obtainable from Board staff upon request]. A detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

(c) - (f) (No change.)

(g) [The Board shall make available upon request a form for use in notifying customers under (c) above. The form notice shall be used for all government-private energy

aggregation programs, except if a program uses special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board Secretary for prior approval.] **For government-private energy aggregation programs, the lead agency shall submit a draft notice for use in notifying customers under (c) above to the Board Secretary and the Director, Division of Rate Counsel. This submittal shall provide at least 15 calendar days for Board staff and/or Rate Counsel to comment on the forms.** The draft notice shall include, at a minimum, all of the information required at (f) above. **The Board shall make available on its website sample customer notification forms for government-private energy aggregation programs that do not use special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or include appliance repair services. The sample customer notification forms can be found at <http://www.nj.gov/bpu/about/divisions/energy/governmentenergyaggregation.html>.**

(h) - (p) (No change.)

14:4-6.6 Establishing an Option 2 energy aggregation program

(a) – (b) (No change.)

(c) Each participating municipality in an Option 2 government-private energy aggregation program shall execute an LDC aggregation agreement with each LDC that serves customers in the municipality[, using the applicable form agreement found on the Board's website at <http://nj.gov/bpu/>]. A detailed description of the LDC aggregation agreement is set forth at N.J.A.C. 14:4-6.7.

(d) - (r) (No change.)

(s) [The Board shall post a form notice to customers on its website at <http://nj.gov/bpu/>. This form notice shall be used for all government-private energy aggregation programs, except if a program uses special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or includes appliance repair service. For these programs, the lead agency shall submit a draft notice to the Board Secretary for approval.] **For government-private energy aggregation programs, the lead agency shall submit a draft notice for use in notifying customers under (q) above to the Board Secretary and the Director, Division of Rate Counsel. This submittal shall provide at least 15 calendar days for Board staff and/or Rate Counsel to comment on the forms.** The draft notice shall include, at a minimum, all of the information required at (r) above. **The Board shall make available on its website sample customer notification forms for government-private energy aggregation programs that do not use special pricing for renewable energy in accordance with N.J.A.C. 14:4-6.9(g), or include appliance repair services. The sample customer notification forms can be found at <http://www.nj.gov/bpu/about/divisions/energy/governmentenergyaggregation.html>.**

(t) - (u) (No change.)

14:4-6.7 LDC aggregation agreement for government-private energy aggregation programs

(a) After the adoption of an ordinance or resolution authorizing establishment of a government-private energy aggregation program, each participating municipality shall execute an LDC aggregation agreement with each LDC that serves customers in the

municipality.[, using the applicable form agreement found on the Board's website at <http://nj.gov/bpu/>. This] **The negotiated LDC aggregation** agreement **will** govern[s] the working relationship between the participating municipality and the LDC during the establishment and operation of the government-private energy aggregation program.

(b) The LDC aggregation agreement shall require the government aggregator to do the following:

1. - 2. (No change.)

3. Reimburse the LDC for [certain costs, as specified in the form LDC aggregation agreement provided by the Board] **its actual, incremental costs incurred as a result of this subchapter**; and

4. (No change.)

(c) - (d) (No change.)

14:4-6.9 Price requirements for government-private programs

(a) - (f) (No change.)

(g) A contract providing for electric generation service and/or gas supply service to residential customers under a government-private energy aggregation program may set a rate for such service that is higher than the benchmark price only if both of the following criteria are met:

1. (No change.)

2. The participating municipality notifies all residential customers that will participate in or are eligible to participate in the program that an electricity rate higher than the benchmark price is under consideration. This notice shall be provided through

the customer opt-out notice letter required under N.J.A.C. 14:4-6.5[(g)](c) and 6.6[(s)](q).

(h) (No change.)

14:4-6.11 Notice requirements for changes to active government-private energy aggregation programs

(a) If there is a change in TPS or pricing structure during the operation of a government-private energy aggregation program, all participating residential customers shall be promptly notified in writing of their right to decline continued participation, as follows:

1. Under an Option 1 program, the government aggregator shall notify the LDC(s) that provided the 30-day notice to residential customers required under N.J.A.C. 14:4-6.5(c), of the change in TPS or pricing structure, and provide the LDC(s) with a copy of the program change notice. The LDC(s) shall mail the program change notice to the residential customers participating in the program; and

2. Under an Option 2 program, the program change notice shall be provided to the residential customers participating in the program by the lead agency or each participating municipality, whichever provided the 30-day notice to residential customers required under N.J.A.C. 14:4-6.6(q).

(b) The program change notice required under (a) above shall be prepared by the government aggregator. The entity responsible for providing the notice to customers shall promptly provide a written certification to the Board that the

notice was provided to customers along with a copy of the program change notice.

The program change notice shall include the following:

- 1. A description of the change in the TPS and/or pricing structure and an explanation of why this change is occurring;**
- 2. A statement that the residential customer has a right to opt-out of the program; but that if no opt-out is submitted the customer will continue to be included in the program;**
- 3. If there is a change in the pricing structure, a description of the change in pricing structure, an estimate of the impact on the bill of a typical residential customer, and any other information necessary to enable the customer to compare the program to other alternatives;**
- 4. A requirement that any opt-out response be submitted to the option administrator within 30 calendar days after the postmark on the notice;**
- 5. The date for the change in the TPS and/or pricing structure;**
- 6. Directions on how to submit an opt-out response; and**
- 7. A contact name, phone number, and e-mail address for customer inquiries.**

SUBCHAPTER 7. RETAIL CHOICE CONSUMER PROTECTION

14:4-7.6 Contracts

(a) A TPS shall not provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification identified in N.J.A.C. 14:4-2.3 and as the Board may permit to initiate

such service(s), for switching TPSs or for renewal thereof. **On or before the date the TPS submits a change order to an LDC, and within 24 hours of when a customer authorizes a contract renewal, the TPS shall send a copy of the TPS contract to the customer. The TPS may do this by an electronic method or by regular mail, at the option of the customer, or if the customer signed up in person, the TPS may hand deliver the contract to the customer.**

(b) - (i) (No change.)

(j) Where an affirmative written signature is not obtained for renewal of a residential electric generation service or gas supply service contract, the existing contract shall continue on a month-to-month basis under the current terms and conditions and pricing.

This does not preclude the TPS from using any of the change order verification methods set forth in N.J.A.C. 14:4-2.3(c) to verify that the customer agrees to the renewal contract terms.

(k) (No change.)

(l) The contract may not include provisions (sometimes referred to as “material change notices”) that permit the TPS to change material terms of the contract without the customer’s affirmative authorization unless the change is required by operation of law. “Material terms of a contract” include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. “Non-material” terms include those regarding the address where payments should be sent or the phone number to be used for customer inquiries. Changing the price to reflect a change in the Sales and Use Tax or other State-mandated charge would be permitted as a change required by operation of

law.

14:4-7.12 Fixed rates

(a) If a TPS signs up a customer or renews a customer for a rate that the TPS characterizes as “fixed” or “firm,” or the TPS uses other language to describe the rate as not variable:

1. The TPS must provide the time period for which the rate is fixed in that communication; and

2. The TPS may not charge the customer a rate that is higher than the fixed rate during the period for which it is fixed, without the customer’s affirmative consent.